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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,970	12/31/2001	Ronald L. Edens	17,707	9623

23556 7590 07/29/2004

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

4W

<b>Office Action Summary</b>	<b>Application No.</b> 10/038,970	<b>Applicant(s)</b> EDENS ET AL.	
	<b>Examiner</b> C. Lynne Anderson	<b>Art Unit</b> 3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-12,14-24 and 26-36 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-12,14-24 and 26-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) ☐ All    b) ☐ Some \* c) ☐ None of:
      - 1. ☐ Certified copies of the priority documents have been received.
      - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/22/04</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Claim Objections***

Claim 1 is objected to because of the following informalities: The amendment to claim 1 removes the phrase 'axis positioned parallel to' in line 22, thereby making the limitation inconsistent with the prior recitation in lines 12-13. Appropriate correction is suggested.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-12, 14-24, and 26-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glasgow et al. (6,613,031).

With respect to claims 1, 12, 15, 24, 27, and 34, Glasgow discloses all aspects of the claimed invention with the exception of the tab extending from the second transverse end area having a length of no greater than about 70 mm. Glasgow discloses an absorbent article 1, as shown in figure 1, comprising a fluid permeable cover 4, a liquid impermeable baffle 6, and an absorbent 2. The absorbent article 1 is configured to provide a labial pad for disposition within the vestibule of a female wearer, as disclosed in column 2, lines 35-45. The absorbent article 1 comprises tabs 8 and 10, as shown in figure 2, extending outward from the periphery of each of the first and second transverse end areas.

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The absorbent article 1 is shorter along its transverse axis than along its longitudinal axis, as shown in figure 1. The absorbent article 1 is fully capable of being folded along a line parallel to its transverse axis while the tabs 8 and 10 are being gripped and pulled towards each other; and such a fold would provide a recess. The absorbent 2 has a width of about 70 mm, as disclosed in column 4, line 67, and a length of about 80 mm, as disclosed in column 5, lines 30-32. Tab 10 has a length which is no greater than about 70 mm and a width which is no greater than 50 mm, as shown in figure 1. Tab 8 has a width which is no greater than 50 mm, as disclosed in column 5, line 6. The tabs 8 and 10 are capable of being grasped by a user and used to fold the absorbent article 1 prior to use. It would have been an obvious matter of design choice to make the length of the tab no greater than about 70 mm, as the applicant has not disclosed that a length of no greater than about 70 mm solves any stated problem or serves any particular purpose, and it appears the invention would perform equally well.

With respect to claims 3, 5, 14, 17, 26, and 29, the tabs 8 and 10 comprise an absorbent material, which is therefore inherently also a fluid permeable material, as disclosed in column 3, lines 63-66.

With respect to claims 9, 10, 21, 22, 33, and 35, the tabs 8 and 10 comprise a liquid impermeable material, which is an extension of the liquid impermeable baffle 6, as shown in figure 3.

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Claims 4, 7, 16, 19, 28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glasgow et al. (6,613,031) as applied to claims 1, 12, and 24 above, and further in view of Sturino (5,713,886).

Glasgow discloses all aspects of the claimed invention with the exception of the fluid permeable cover and the absorbent extending into the tabs.

Sturino discloses an absorbent article 10, as shown in figure 1, comprising a fluid permeable cover 14, an absorbent 12, and a tab 18. The fluid permeable cover 14 and the absorbent 12 extend into the tab 18, as shown in figure 3, thus simplifying the construction of the absorbent article.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to extend the fluid permeable cover and the absorbent into the tabs of Glasgow, as taught by Sturino, to simplify the construction of the article.

Claims 6, 8, 11, 18, 20, 23, 30, 32, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glasgow et al. (6,613,031) as applied to claims 1, 12, and 24 above, and further in view of Osborn, III (5,509,914).

Glasgow discloses all aspects of the claimed invention with the exception of the absorbent being a superabsorbent polymer.

Osborn discloses an absorbent article 10, as shown in figure 1, comprising an absorbent 34. The absorbent 34 comprises superabsorbent polymer, as disclosed in column 4, lines 49-65. The use of superabsorbent polymer in the absorbent 34 allows the absorbent article 10 to be thin and flexible, while maintaining a high absorbent capacity, as disclosed in column 2, lines 30-33.

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It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the absorbent of Glasgow with a superabsorbent polymer, as taught by Osborn, to provide a thin and flexible, yet highly absorbent, article.

### ***Response to Arguments***

In response to applicant's argument that the article disclosed by Glasgow et al. is not configured to be folded prior to disposition of the article, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Glasgow et al. disclose an article that is flexible, and therefore fully capable of being folded along a line parallel to its transverse axis while the tabs are being gripped and pulled towards each other. The article of Glasgow is fully capable of being folded while being gripped by tabs extending from the article, as described in the rejection under 35 U.S.C. 103(a) above. No modification of the article of Glasgow is required to allow the article to be folded. Whether or not Glasgow discloses intent to fold the article, the article is fully capable of being folded and therefore fulfills the claimed limitations.

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In response to applicant's argument that the length of the tail disclosed by Glasgow would cause difficulty in using the tail as a gripping tab, it is noted that this argument is merely speculation. Further, since the argument that the length of the tail results in the tab being less able to be efficiently grasped is not disclosed in the instant specification, it is insufficient to overcome the rejection under 35 U.S.C. 103(a).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CMA  
cla  
July 19, 2004

  
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